IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 13TH JUNE 2006 / 23RD JYAISHTA, 1928

MFA.No. 1062 of 1993()

OPMV.107/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ATTINGAL

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APPELLANT:

NAZAR, EATHUNDIL VEEDU, PERINADU CHERRY,
PERINADU VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.ASOK M.CHERIAN

RESPONDENTS:

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1. NAZARUDEEN E.A., RAHIM MANZIL,
NADAGARA, VARKALA.P.O. (REMOVED).

2. E.A.KASSIM, RAHIM MANZIL, NADAGARA,
VARKALA.P.O. (REMOVED).

3. THE DIVISIONAL MANAGER, THE NEW INDIA
ASSURANCE COMPANY LIMITED, DIVISIONAL OFFICE,
THIRUVANANTHAPURAM.

THE FIRST AND SECOND RESPONDENTS ARE REMOVED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER ORDER DATED 2.6.2004 ON IA.1446 OF 2004.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2006, THE COURT ON 13/06/2006 DELIVERED THE FOLLOWING:

K.HEMA, J.

M.F.A.NO.1062 OF 1993

Dated this the 13th day of June, 2006

JUDGMENT

Appellant is the claimant. He filed petition under Sections 166 and 167 of the Motor Vehicles Act claiming compensation of Rs.1,00,000/-. He was granted Rs.31,896/- with 12% interest as compensation. The appellant challenges the quantum of compensation awarded in this case.

2. There is no dispute with respect to the negligence on the part of the driver in causing the accident which resulted in the injuries sustained by the appellant. There is also no dispute with respect to the liability of the respondent to pay the compensation. The injuries sustained by the appellant are: “Trouchantic fracture ® with one inch wasting of ® thigh with 1.5 inch wasting of ® thigh with partial ankylosis of ® thigh”. According to learned counsel for the appellant, the appellant had difficulty in walking and doing his job as a head load worker after the accident, following the injury which has resulted in permanent disability as evidenced by Exhibit A9. The disability certificate is issued by the doctor. The Tribunal has accepted that the appellant has 13% permanent disability.

3. PW1 deposed that he is not able to sit and there is shortening of his leg because of the injury. Exhibit A9 shows that there is wasting of right thigh and partial ankylosis of right thigh. Exhibit A9 reveals that there is one inch wasting of right thigh. Towards pain and suffering, the Tribunal awarded only Rs.4,000/-. But, according to the appellant, he suffered because of the injury and he was totally bedridden for seven months. He underwent pain and suffering and atleast by going by the schedule, the appellant ought to have been granted Rs.5,000/-, since he suffered grievous injury. On going through the schedule and evidence adduced in this case, I find that there is no reason why Rs.1,000/- more will have to be granted towards pain and suffering.

4. Learned counsel for the appellant also submitted that the appellant is a loading and unloading worker and in assessing the compensation, notional income ought to have been taken into account. But the Tribunal has fixed only Rs.600/- per month as his income. The Tribunal held that the petitioner is a loading and unloading worker having a monthly income of Rs.600/- per month. The Tribunal has not assigned any reason to fix the monthly income as Rs.600/-. PW1 deposed that he is getting an average of Rs.75/- per day from his job. It is clear from the evidence that the accident occurred when he was unloading goods from the vehicle involved in

the accident. Though he could not produce any document to prove his income, there is no challenge with respect to the income. In the above circumstances, in the absence of documentary evidence, the court ought to have atleast taken into account the notional income for assessing the compensation. The notional income can be fixed as Rs.1,250/- per month and he has to be given compensation for loss of earning, based on such income.

5. Learned counsel for the appellant pointed out that towards the loss of earning, the Tribunal awarded only 4,200/-. According to the Tribunal, the appellant did not adduce any evidence to prove that he is a permanent employee. Therefore, taking into account the fact that he had no fixed income, his average income was fixed as Rs.600/- per month. Towards the loss of earning for seven months, at the rate of Rs.600/- per month, compensation was awarded as Rs.4,200/-.

6. Having found that the appellant's notional income can be Rs.1,250/-, the appellant is entitled for compensation for the period during which he was actually bedridden because of the fracture and the treatment. The court below has awarded compensation for seven months towards loss of earning. Therefore, the appellant will be entitled to get Rs.1,250 x 7 = 8,750 towards loss of earning.

7. Appellant was awarded Rs.20,000/- as compensation for permanent disability and loss of earning power. The appellant was aged only 26 years as on the date of accident, namely, 10.9.1990.

8. The appellant, as per the evidence and the findings of the court below, is permanent disabled. He has sustained a permanent partial disability of 13% as evidenced by Exhibit A9. The Tribunal did not find any doubt regarding the percentage of disability. The evidence of PW5 and Exhibit A9 show that the appellant will not be in a position to work as a loading and unloading worker. The appellant was aged 28 years at the time of determining the compensation by the Tribunal. Taking guidance from the schedule to the Motor Vehicles Act, the compensation can be assessed by adopting the income excluding the expenses and multiplying with the factor assessed in the schedule. The Tribunal has not taken any particular formula to compute the compensation under the head “permanent disability” and “loss of earning power”. In this regard it has been held that the court was guided by the formula scheduled to the Motor Vehicles Act in assessing the compensation. While doing so, I find that the multiplier which is to be adopted in this case as per the schedule is 18, taking into account the age of the appellant, which is 26 years as per evidence. On considering various facts regarding injuries, disability, income etc., I find that

the multiplier, which can be adopted in this case can be 15 (vide **U.P.State Road Transport Corporation v. Thrilokchandra** (1996(4) SCC 362). Therefore, the compensation which the appellant is entitled to get for permanent disability and loss of earning power will be: 1,250 x 12 x 13% x 15 = 29250. The Tribunal has awarded only Rs.20,000/- and the appellant is entitled to get an additional amount of Rs.9,250/-. The total additional amount of compensation payable to the appellant will be 1000 + 4550 + 9250 = 14800. The third respondent Insurance Company will pay the said amount with 9% interest per annum from date of petition till realisation.

The appeal is allowed to the above extent.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

M.F.A.NO.1062 OF 1993

JUDGMENT

13.6.2006